

The Examiner has required restriction to one of the following inventions under 35 U.S.C. §

121:

- I. Claims 2, 17, and 35-39 directed to a method of preventing toxicity of apo E having a molecular weight of at least 5kD or a method of treating a disease caused by apo E toxicity comprising [administering] an effective amount of a compound selected from [the group consisting of] polyvinyl sulfate, pentosan polysulfate, dextran polysulfate, dextran sulfate, heparan sulfate and mixtures thereof;
- II. Claims 3-5, 18-20, 40-44 directed to a method of preventing toxicity of apo E having a molecular weight of at least 5kD or a method of treating a disease caused by apo E toxicity comprising [administering] an effective amount of a compound comprising naphthalenesulfonic acid covalently bonded to a phenyl or naphthyl group; and
- III. Claims 6-9, 21-24, 45-49 directed to a method of preventing toxicity of apo E having E having a molecular weight of at least 5kD or method of treating a disease caused by apo E toxicity comprising [administering] an effective amount of a compound comprising a triphenylmethane core modified with at least one sulfate or carboxylate group.

According to the Examiner, the inventions are distinct, each from the other because of the following reasons:

Inventions in Group I and Group II (or III) are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (M.P.E.P § 806.04; M.P.E.P § 808.01)

The Examiner continues the comment by stating that "because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their different classification and the search required for each group is not the same, wherein a reference which anticipates the invention in Group I would not render the invention of Group II or Group III obvious, absent ancillary art, restriction for examination purposes as indicated is proper."

Further, upon the election of a patentably distinct invention, Applicant is required to elect a single disclosed species from the following lists provided for each of the Groups:

- a. Group I - polyvinyl sulfate, pentosan polysulfate, dextran polysulfate, dextran sulfate, heparan sulfates.
- b. Group II - ponceau S, Evan's blue, sumarin sodium, direct blue 15, calconcarboxylic acid, amaranth, trypan blue, congo red, benzopurin 4b, Chicago sky blue 6b, sulfonazo III.
- c. Group II - autintricarboxylic acid, aniline blue, methyl blue, light green SF yellowish, Coomassie brilliant blue G-250, Coomassie brilliant blue R-250.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. In addition, Applicant is required to include an identification of the species that is elected and a listing of all claims readable thereon, including any claims subsequently added (see, M.P.E.P § 809.02(a)). An argument that a claim is allowable, or that all claims are generic, is considered non-responsive unless accompanied by an election.

Upon allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

Applicants hereby elect to continue prosecution of the claims of Group I (claims 2, 17, and 35-39), the present election being without prejudice, and without traverse.

Of the sulfated polyanionic species listed in Group I, Applicant elects heparan sulfate for initial examination. Claims 2, 17, and 35-39 read on this species.

In view of the foregoing, it is respectfully requested that the Examiner reconsider the present application, allow all of the elected claims, and pass the application for issue. If the

Office Action

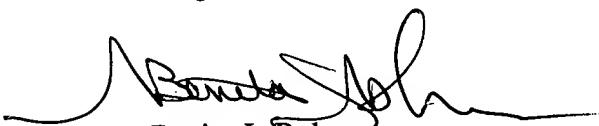
Response to Office Action (Restriction Requirement)

USSN 09/892,308 filed June 27, 2001

Page 4

Examiner believes that the prosecution of this case can be expedited by a telephone interview, the Examiner is requested to call attorney for Applicant at the telephone number indicated hereinbelow.

Respectfully submitted,



Benita J. Rohm
Reg. No. 28,664
Rohm & Monsanto, P.L.C.
660 Woodward Avenue, Suite 1525
Detroit, MI 48226
Telephone (313) 965-1976
Telecopier (313) 965-1951

BJR:rk::RRR.AL3

BEST AVAILABLE COPY